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09/931,305	08/16/2001	Krishna Kishore Yellepeddy	AUS920010442	3146

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11/20/2003

Darcell Walker
8107 Carvel Lane
Houston, TX 77036

EXAMINER

KOSOWSKI, ALEXANDER J

ART UNIT	PAPER NUMBER
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2125

DATE MAILED: 11/20/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary

Application No.

09/931,305

Applicant(s)

YELLEPEDDY ET AL.

Examiner

Alexander J Kosowski

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 August 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) 8-16 and 24-30 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7, 17-23 and 31-37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 August 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

- 1) Claims 1-37 are presented for examination.

Election/Restrictions

- 2) Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-7, 17-23 and 31-37, drawn to optimizing energy consumption based on supplier availability, classified in class 700, subclass 291.
- II. - Claims 8-16 and 24-30, drawn to energy bidding based on cost factors, classified in class 705, subclass 37.

- 3) The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention II has separate utility such as distribution of services by an auction or bidding system. See MPEP § 806.05(d).

- 4) Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

- 5) During a telephone conversation with Jeffrey LaBaw on 11/12/03 a provisional election was made without traverse to prosecute the invention of Group I, claims 1-7, 17-23 and 31-37. Affirmation of this election must be made by applicant in replying to this Office action. Claims 8-16 and 24-30 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Claim Objections

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- 6) Claim 3 is objected to because of the following informalities:

Referring to claim 3, line 5, the phrase "typically use" should read --typically used--.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

- 7) The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

- 8) Regarding claim 23, the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

Claim Rejections - 35 USC § 102

- 9) The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

- 10) Claims 1-3, 17-20, 31-33 are rejected under 35 U.S.C. 102(b) as being unpatentable over Ehlers et al (U.S. Pat 5,924,486).

Referring to claim 1, Ehlers teaches a method for optimizing energy consumption and energy cost at an end-user facility comprising the steps of gathering information about energy consumption requirements of an end-user (col. 3 lines 25-36), retrieving information on the availability of energy supplied by energy suppliers to end-users (col. 7 lines 53-55 and col. 9 lines 35-49), compiling a list of energy usage options, for energy consumption of a particular device within a particular time period, based on energy consumption requirements and energy

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availability (col. 7 lines 53-58), said energy use options including energy supply entities and end-users that generate energy (col. 11 lines 38-47), selecting the energy use option from the compiled list that provides the optimal energy use for a particular device (col. 11 lines 38-47), and implementing the selected energy use option at the end-user facility(col. 4 lines 6-10).

Referring to claim 2, Ehlers teaches determining the number of devices of the user that require the consumption of energy in order to operate (col. 3 lines 25-30).

Referring to claim 3, Ehlers teaches gathering information on each device of the user, such information comprising the amount of time the device will be operating, the preferred time of day for operating the device, the types of energy required by the device and the amount of energy typically used by the device in standard operations (col. 3 lines 30-36 and col. 9 line 66 through col. 10 line 13).

Referring to claim 17, Ehlers teaches an end-user controller including an accounting program and a memory operatively connected to said accounting program, said controller capable of identifying energy usage options (col. 7 lines 11-35 and col. 8 lines 49-54), a terminal, adapted to enable an end-user to communicate with said controller for the purpose of transmitting information about appliance operating requirements to said accounting program (col. 9 lines 19-34), an energy information storage facility for storing and maintaining information about available energy sources for the end-user (col. 10 lines 45-65), a decision-making entity that automatically selects and implements an optimal energy option, the selection and implementation being based on an established end-user energy consumption policy (col. 11 lines 38-47), and a communication network that enables communication between said end-user controller and said energy information storage facility (col. 11 lines 1-6).

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Referring to claim 18, Ehlers teaches that said end-user controller is adapted to retrieve from said storage facility information about energy options (col. 10 lines 45-50).

Referring to claim 19, Ehlers teaches that said decision-making entity is contained in said end-user controller (col. 11 lines 8-11).

Referring to claim 20, Ehlers teaches that said energy information storage facility is an energy accounting server (col. 11 lines 1-6, whereby the storage facility may be implemented as a server).

Referring to claim 31, the claim varies from claim 1 in that it claims a computer program product in a computer readable medium rather than a method. The method of claim 1 could inherently be implemented as a computer program product in a computer readable medium. Therefore, referring to claim 31, see rejection of claim 1 above.

Referring to claim 32, see rejection of claim 2 above.

Referring to claim 33, see rejection of claim 3 above.

Claim Rejections - 35 USC § 103

11) The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12) Claims 4-7, 21-23 and 34-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ehlers, further in view of Chasek (U.S. Pat 5,237,507).

Referring to claim 4, Ehlers teaches retrieving information on each energy resource comprising the types of energy provided and the price of the energy of the particular time range

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(col. 9 lines 35-49 and col. 11 lines 38-47). However, Ehlers does not explicitly teach retrieving the amount of energy available over a particular time range.

Chasek teaches a method of optimizing energy consumption whereby a quantity of energy available from energy suppliers during a particular time range is received (col. 4 lines 14-21).

Therefore, it would have been obvious to one skilled in the art at the time the invention was made to receive the quantity of energy available from each of the energy suppliers during a particular time range in the invention taught by Ehlers since this would set up inter-utility competition, which would introduce a competitive dynamic which would keep prices low within the framework of minimal regulation (Chasek, col. 1 lines 51-64).

Referring to claim 5, Ehlers teaches creating, from energy consumption requirements information, an energy consumption policy for each device that will consume energy (col. 3 lines 25-30), creating an energy availability profile from the information retrieved on each energy source (col. 9 lines 35-49), comparing the energy requirements of a device for which energy is desired with the available energy from the energy resources and generating a list of optimal energy resources based on said comparisons (col. 7 lines 53-58 and col. 11 lines 38-47).

Referring to claim 6, Ehlers teaches the selection of an energy resource is based on the amounts of energy required by a device for operation (col. 11 lines 38-65). However, Ehlers does not explicitly teach the selection of an energy resource based on a match between the amounts of energy required by a device for operation and the quantity of energy available from each of the energy suppliers during a particular time range.

Chasek teaches a method of optimizing energy consumption whereby a quantity of energy available from energy suppliers during a particular time range is received and decisions to buy the energy are determined based on the available energy (col. 4 lines 14-21).

Therefore, it would have been obvious to one skilled in the art at the time the invention was made to select an energy resource based on a match between the amounts of energy required by a device for operation and the quantity of energy available from each of the energy suppliers during a particular time range in the invention taught by Ehlers since this would set up inter-utility competition, which would introduce a competitive dynamic which would keep prices low within the framework of minimal regulation (Chasek, col. 1 lines 51-64).

Referring to claim 7, Ehlers teaches that the selection and implementation steps are automatically performed based on established end-user energy consumption policies (col. 11 lines 38-47).

Referring to claim 21, see rejection of claim 4 above.

Referring to claim 22, Ehlers teaches the system above. In addition, Ehlers teaches that information about available energy supplies is stored in an accounting server (col. 10 line 33 through col. 11 line 6). However, Ehlers does not explicitly state that information for each energy supplier is arranged in a record containing fields with the types of information in each field.

It is noted that one skilled in the art would have arranged information in a record containing fields in the invention taught by Ehlers since records containing fields are a common and well known method of storing information in servers utilized by data processing systems.

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Referring to claim 23, Ehlers teaches that said accounting server contains information about energy compensation options including fix prices (col. 9 lines 35-49).

Referring to claim 34, see rejection of claim 4 above.

Referring to claim 35, see rejection of claim 5 above.

Referring to claim 36, see rejection of claim 6 above.

Referring to claim 37, see rejection of claim 7 above.

Conclusion

13) The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Elliason (U.S. Pat 5,644,173) – teaches real time load control.

Enga (U.S. PGPUB 2002/0082748) – teaches a utility monitoring system.

Ellis (U.S. PGPUB 2002/0198629) – teaches a computerized utility cost system.

Johnson (U.S. Pat 5,758,331) – teaches a computer-assisted utility sales system.

Mistr, Jr. (U.S. Pat 5,794,212) – teaches an energy market communications system.

Callen (U.S. Pat 6,556,976) – teaches an e-commerce system.


14) Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alexander J Kosowski whose telephone number is 703-305-3958. The examiner can normally be reached on Monday through Friday, alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leo Picard can be reached on 703-308-0538. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306. In addition, the examiner's RightFAX number is 703-746-8370.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-3900.

Alexander J. Kosowski
Patent Examiner
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A handwritten signature in black ink, appearing to read "L. P. Picard", written in a cursive style.

LEO PICARD
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100